

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION

On Its Own Motion,

-VS-

QUALITY SAW & SEAL, INC.,

Determination of Liability under  
the Illinois Underground Utility  
Facilities Damage Prevention Act.

Springfield, Illinois.  
August 24, 2005.

Met, pursuant to notice at 9:00 A.M.

BEFORE :

MR. STEPHEN YODER, Administrative Law Judge

APPEARANCES :

MS. LINDA BUELL  
Office of General Counsel  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62701

(Appearing on behalf of Staff of the Illinois  
Commerce Commission)

SULLIVAN REPORTING COMPANY, by  
H. Lori Bernardy, Reporter  
Ln. #084-004126

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APPEARANCES

(CONT)

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(Appearing telephonically on behalf of Quality  
Saw & Seal, Inc.)

|    |                                  |               |                  |                 |                 |
|----|----------------------------------|---------------|------------------|-----------------|-----------------|
| 1  |                                  |               | <u>I N D E X</u> |                 |                 |
| 2  | <u>WITNESSES</u>                 | <u>DIRECT</u> | <u>CROSS</u>     | <u>REDIRECT</u> | <u>RECROSS</u>  |
| 3  | WILLIAM RILEY                    |               |                  |                 |                 |
| 4  | By Ms. Buell                     | 21            |                  | 54/61           |                 |
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| 21 |                                  |               | <u>I N D E X</u> |                 |                 |
| 22 | <u>EXHIBITS</u>                  |               | <u>MARKED</u>    |                 | <u>ADMITTED</u> |
| 23 | ICC Staff Exhibit 1.0            |               |                  |                 |                 |
| 24 | With Attachments 1.1 through 1.3 |               |                  |                 | 23              |
| 25 | ICC Staff Exhibit 2.0            |               |                  |                 |                 |
| 26 | With Attachments 2.1 through 2.5 |               |                  |                 | 65              |
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| 28 | With Attachments 2.1 through 2.4 |               |                  |                 | 85              |
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| 30 | With Attachments 3.1 through 3.8 |               |                  |                 | 90              |
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| 32 | With Attachments 1.1 through 1.6 |               |                  |                 | 95              |

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1 to enter their appearance.

2 One matter before we get started, I  
3 would note for the record that there was originally  
4 filed in this docket a Petition to Intervene by SBC  
5 Illinois before that. And any of the parties that  
6 filed any response or positions on that, there was  
7 filed a Notice of Withdraw of this Petition to  
8 Intervene by SBC on July 19, 2005, which resolved  
9 that issue.

10 Are we then ready to proceed with the  
11 hearing?

12 MS. BUELL: Yes, your Honor.

13 JUDGE YODER: All right.

14 MS. BUELL: Staff would like to call its first  
15 witness. Staff calls Mr. William Riley to the stand.

16 JUDGE YODER: Mr. Riley, would you raise your  
17 right hand.

18 (Whereupon the Witness was sworn  
19 by the Administrative Law  
20 Judge.)

21 JUDGE YODER: All right. Please proceed.

22

1                               W I L L I A M     R I L E Y

2     having been first duly sworn by the Administrative  
3     Law Judge, witnesseth and saith as follows:

4                               DIRECT EXAMINATION

5                               BY MS. BUELL:

6               Q     Good morning, Mr. Riley, would you please  
7     state your full name and spell your last name for the  
8     record?

9               A     William Burton Riley, R-I-L-E-Y.

10              Q     And, Mr. Riley, by whom are you employed?

11              A     I'm employed by the Illinois Commerce  
12     Commission.

13              Q     And what's your position at the Illinois  
14     Commerce Commission?

15              A     I'm the Manager of J.U.L.I.E. Enforcement.

16              Q     Now, Mr. Riley, have you prepared written  
17     testimony for purposes of this proceeding?

18              A     Yes, I have.

19              Q     And would you have before you a document  
20     which has been marked for identification as ICC Staff  
21     Exhibit 1.0 which consists of a cover page, nine  
22     pages of narrative testimony, Attachments 1.1 through

1 1.3, and is titled "Direct Testimony of William  
2 Riley"?

3 A Yes, I do.

4 Q And is this a true and correct copy of the  
5 Direct Testimony that you've prepared for this  
6 proceeding?

7 A Yes, it is.

8 Q Do you have any corrections to make to your  
9 prepared testimony?

10 A No, I do not.

11 Q Is the information contained in ICC Staff  
12 Exhibit 1.0 and the accompanying attachments true and  
13 correct to the best of your knowledge?

14 A Yes, it is.

15 Q And if I were to ask you the same questions  
16 today, would your responses be the same?

17 A Yes, they would.

18 Q Thank you.

19 MS. BUELL: Your Honor, at this time I move for  
20 admission into evidence Mr. Riley's Prepared Direct  
21 Testimony marked as ICC Staff Exhibit 1.0 including  
22 Attachments 1.1 through 1.3.



1                   I note that this is the same document  
2   that was filed on the Commission's e-Docket system on  
3   August 3, 2005.

4           JUDGE YODER: Any objection to the admission of  
5   those exhibits?

6           MR. BUELL: No objection.

7           JUDGE YODER: All right. Exhibit 1.0 and three  
8   Attachments will be admitted into evidence.

9                               (Whereupon ICC Staff Exhibit  
10                              Number 1.0 with Attachments 1.1  
11                              through 1.3 was admitted into  
12                              the record.)

13          JUDGE YODER: Do you have any other questions  
14   of Mr. Riley?

15          MS. BUELL: No, your Honor, I tender Mr. Riley  
16   for cross-examination.

17          JUDGE YODER: All right.

18                              CROSS-EXAMINATION

19                              BY MR. BUELL:

20          Q    Mr. Riley, according to your direct  
21   testimony you have a degree from Bradley University  
22   in Mechanical Engineering; is that correct?

1           A     That's correct.

2           Q     That is a discipline that's different from  
3 civil engineering; is that correct?

4           A     Yes, it is.

5           Q     Okay. And with respect to mechanical  
6 engineering, you deal with issues involving motors,  
7 components, products similar to that; is that  
8 correct?

9           A     Mechanical components, that's what the  
10 general coursework was.

11          Q     Now during the course of your training in  
12 mechanical engineering, did you take any civil  
13 engineering courses?

14          A     Yes, I did.

15          Q     Okay. Did you minor some degree of  
16 certification regarding civil engineering?

17          A     No, I do not.

18          Q     You were first employed by the Illinois  
19 Commerce Commission in, what was it, 19 -- was it  
20 1989?

21          A     Ummm, yes 1989.

22          Q     Okay. And your first duties with the

1 Illinois Commerce Commission was an Economic Analyst;  
2 is that correct?

3 A That's correct.

4 Q Did that have anything to do with civil  
5 engineering?

6 A No, it did not.

7 Q You were then promoted to the Chief of the  
8 Electric Section in 1998; is that correct?

9 A Yes, that's correct.

10 Q And did your promotion to the chief of the  
11 Electric Section have anything to do with civil  
12 engineering?

13 A No, it did not.

14 Q Subsequently, you were promoted the manager  
15 of J.U.L.I.E. Enforcement in 2002; is that correct?

16 A That's correct.

17 Q And was that like January -- February 2002?

18 A Yeah, somewhere in that frame, time frame.

19 Q Okay. Now while you were Chief of the  
20 Electric Section, did you have any responsibility  
21 with respect to reviewing the Illinois Underground  
22 Utility Facilities Damage Prevention Act?

1           A     No, I did not.

2           Q     And while you were working as an Economic  
3     Analyst for the Illinois Commerce Commission, were you  
4     involved in reviewing the Illinois Underground  
5     Utility Facilities Damage Prevention Act?

6           A     No, I did not.

7           Q     Was your first involvement with the  
8     Illinois Underground Utility Facilities Damage  
9     Prevention Act when you were appointed the Manager of  
10    J.U.L.I.E. Enforcement in 2002?

11          A     Actually, it was prior to that date. I was  
12    charged during 2001 with getting the Commission's  
13    J.U.L.I.E. Enforcement Program up and running as in  
14    response to changes to the Intervention Act which  
15    occurred in either 2000 or 2001.

16                   I think 2001.

17          Q     Okay, but prior to -- the Act was initially  
18    amended effective July 1, 2002; is that correct?

19          A     Well, the Act was amended and became  
20    effective prior to that. However certain provisions  
21    of the Act did not become effective until July 1,  
22    2002, that being our enforcement provisions.

1           Q     Okay, but the Act was initially effective  
2 back in 1991; correct?

3           A     Yes.

4           Q     Okay, and then the Legislature amended the  
5 Act, amending various provisions of the Act effective  
6 July 1, 2002?

7           A     That's correct.

8           Q     And you were familiar with both the initial  
9 Act as it was effective in 1991 and along with the  
10 Amendments that then became effective in July 1,  
11 2002; is that correct?

12          A     I have looked back at the previous version  
13 of the Act prior to changes made in 2002.

14          Q     And the enforcement actually then began  
15 subsequent to July 1, 2002 when that became  
16 effective; is that correct?

17          A     That's when we actually began receiving  
18 reports of incidents and investigating those.

19          Q     Now with respect to the initial incident  
20 that arose here, there was a report prepared by North  
21 Shore Gas; is that correct?

22          A     That's correct.

1           Q     And that report would have been submitted  
2     to you?

3           A     That's correct.

4           Q     And then you would have requested that the  
5     Respondent in this case, Quality, submit some type of  
6     response to that report; is that correct?

7           A     That's correct. We sent a Notice of  
8     Investigation and included an Information Request  
9     that we asked Quality to complete and return to us.

10          Q     And Quality did return that to you; is that  
11     correct?

12          A     That's correct.

13          Q     Okay. Now prior to July 1, 2002, were you  
14     familiar with a document called the Standard  
15     Specifications for Road and Bridge Construction  
16     adopted January 1, 2002 by the Illinois Department of  
17     Transportation?

18          A     No, I am not.

19          Q     Okay. Since you became the Chief of  
20     J.U.L.I.E. Enforcement, have you reviewed the  
21     Standard Specifications for Road and Bridge  
22     Construction adopted January 1, 2002 by the Illinois

1 Department of Transportation?

2 A No, I have not.

3 Q Are you familiar with the Illinois  
4 Department of Transportation?

5 A Yes.

6 Q To your knowledge, is Illinois Department  
7 of Transportation involved with respect to design of  
8 roadways within the state of Illinois?

9 A I'm not familiar with what role they play  
10 in the design of the roadways.

11 Q Okay. Are you familiar with any role that  
12 they play with respect to roadways and highways  
13 within the state of Illinois?

14 A They do play a role.

15 Q A significant role?

16 A Well, I'm not sure how you would define  
17 significant, but they did play a large role with  
18 regard to State highways in Illinois.

19 Q All right. Now prior to your appointment  
20 as the Chief of J.U.L.I.E Enforcement, were you  
21 familiar with saw cutting of concrete pavement?

22 A I was aware that it was done.

1           Q     Okay. Subsequent to your appointment, the  
2 enforcement of -- as a J.U.L.I.E. Enforcement  
3 Officer, did you ever have occasion to go out on the  
4 site to observe saw cutting of concrete pavement?

5           A     I haven't ever gone out and actually  
6 observed it for the purpose of observing it, no.  
7 I've seen it done, you know, driving by certain types  
8 of projects.

9           Q     Okay. So your knowledge of it is when you  
10 drive down a roadway, you see that activity being  
11 done at a construction site; correct?

12          A     Correct.

13          Q     Okay. And you have no knowledge as to  
14 specifically what type of equipment is used in saw  
15 cutting?

16          A     Not other -- not other than what I've seen.

17          Q     Now at the time that you were appointed the  
18 Enforcement Officer or Manager of J.U.L.I.E.  
19 Enforcement in 19 -- or, excuse me - 2002, were you  
20 familiar with the various different statutes  
21 regarding the minimum Federal Safety Standards  
22 regarding the installation of various facilities in



1     roadways?

2             A     Did you say prior to?

3             Q     Yeah, prior to your appointment?

4             A     Yes.

5             Q     Okay. And since you've been appointed,  
6     have you reviewed the legislation regarding the  
7     minimum Federal Safety Standards, Section 192.361,  
8     providing for depth of varied surfaces in roads and  
9     streets?

10            A     Yes, I have.

11            Q     All right. Did the Illinois Commerce  
12    Commission adopt this Federal standard as their  
13    minimum safety standard?

14            A     I'm not sure but I believe that they have  
15    with regard to the Pipeline Safety Program.

16            Q     All right. And is it your understanding  
17    from your knowledge of the statute that services have  
18    to be buried at a minimum depth of 18 inches in  
19    streets and roadways?

20            A     That is my understanding of the  
21    installation note.

22            Q     Now this incident, what we're here about

1     today, occurred at 2180 Kipling Lane, Highland Park,  
2     Illinois; is that correct?

3             A     That's correct.

4             Q     Did you ever have occasion to review the  
5     contract between the City of Highland Park, Illinois  
6     and Chicagoland Paving regarding any work that was  
7     being done at that location?

8             A     No, I had not.

9             Q     The Incident Report -- do you have a copy  
10    of the Incident Report with you today?  If not, we  
11    can give you a copy.

12            THE WITNESS:  Do you have a copy of the  
13    testimony?

14            MS. BUELL:  Okay, if you have an extra, sure.

15            THE WITNESS:  Okay, I have that.

16    BY MR. BUELL:

17            Q     There's an indication in the report that a  
18    facility was 8 inches deep; is that correct?

19            A     That's correct.

20            Q     All right.  When you reviewed that report,  
21    did that indicate to you that there may have been a  
22    question regarding the depth of a facility at that

1 location?

2 A What do you mean by a question about the  
3 depth?

4 Q Well, you said that you were aware of the  
5 Statute that facilities are to be buried with 18  
6 inches cover, in this case, the service.

7 And the report indicates there was a  
8 three-quarter gas service; is that correct?

9 A That's correct.

10 Q And according to the statute, that facility  
11 should have been buried within 18 inches of cover  
12 from the top of pavement; is that correct?

13 A The statute does require service to be  
14 buried 18 inches

15 Q Okay. But it was reported by North Shore  
16 Gas that their facility was at a dept of 8 inches at  
17 the time that this incident occurred; correct?

18 A That's correct.

19 Q And North Shore Gas reported that saw  
20 cutting was being performed for road reconstruction;  
21 is that correct?

22 A That's correct. Nah, I don't know if --

1 oh, yes, it does.

2 Q Okay. It's up in the incident description;  
3 is that correct?

4 A Yes, it is.

5 Q Now after you reviewed the report prepared  
6 by North Shore Gas, did that raise any concern that  
7 at the time this incident occurred that the  
8 facilities at that location may have been in  
9 violation of Federal or State law?

10 A As far as the Damage Prevention Act goes  
11 the Act is silent on burial looking at the  
12 facilities. Therefore, if a facility is hit,  
13 regardless of what the depth is, it can be a  
14 violation of the Damage Prevention Act.

15 Q Okay. I'm talking about the Federal  
16 statute regarding the depth of various facilities.  
17 When you reviewed that report, did that indicate to  
18 you that there could be an issue regarding the depth  
19 of the facility at that location which may have then  
20 violated the Federal statute or the Illinois  
21 Administrative Code that was adopted by the ICC  
22 regarding the various facilities?

1           A     I realize that it was less than the  
2     required burial depth. But as far as enforcing any  
3     provisions of the laws that require certain burial  
4     depth, that's not what I do.

5           Q     Okay, that's out of your realm?

6           A     Yes, it is.

7           Q     Okay, but just for your purposes, it drew  
8     some attention to you that there was a problem with  
9     the depth of the facility in relationship to what the  
10    law provided for?

11          A     I don't ever recall a problem with the  
12    depth. We see facilities that are reported to us  
13    that are less than the required installation depth  
14    all the time. That does not mean that it was  
15    necessarily buried at the current depth.

16          Q     Did you see any photographs of the  
17    facilities?

18          A     Yes, I did.

19          Q     And were those photographs provided by  
20    North Shore Gas?

21          A     I received photographs provided by North  
22    Shore about two weeks ago, however I also received

1 the photographs provided by Quality Saw.

2 Q Okay. And you had occasion to observe the  
3 location of the three-quarter inch gas service in  
4 relation to the pavement; is that correct?

5 A Yes, I did.

6 Q Now after you had occasion to receive the  
7 report from North Shore Gas and received a response  
8 from Quality Saw & Seal, Inc., did you at that point  
9 have that an occasion to review the Standard  
10 Specifications for Road and Bridge Construction  
11 adopted January 1, 2002 by the Illinois Department of  
12 Transportation?

13 A No.

14 Q Now you're familiar with Section 52.3, of  
15 the Illinois Underground Utility Facilities Damage  
16 Prevention Act; is that correct -- excuse me 50/2.3?

17 A Yes, I'm familiar with that section.

18 Q And that's a Section that you review  
19 regularly in the course of your position as the  
20 Manager of the J.U.L.I.E. Enforcement; is that  
21 correct?

22 A That's correct.

1           Q     Now this is a definition Section; is that  
2     correct?

3           A     Yes, it is.

4           Q     And within that Section it lists various  
5     activities which the Legislature felt would be  
6     encompassed within the scope of the term  
7     "excavation"; is that correct?

8           A     That's correct.

9           Q     We've got a listing of grading; is that  
10    right?

11          A     Yes.

12          Q     And trenching in that section?

13          A     Yes.

14          Q     We also have digging?

15          A     Correct.

16          Q     Ditching?

17          A     Correct.

18          Q     Drilling?

19          A     Correct.

20          Q     Bartering?

21          A     Correct.

22          Q     Boring?

1           A     Yes.

2           Q     Okay, now with respect to boring, wasn't  
3     that added into the Act effective July 1, 2002 in the  
4     term "excavation" versus the way it says the statute  
5     read prior to that day?

6           A     I don't recall.

7           Q     If I show you a copy of the statute, and  
8     I'm going to show you the 92nd General Assembly PA  
9     92-178.

10                     This shows Amendments to the statute  
11     with the additions which are underlined and the  
12     deletions which are striked-out. If you take a look  
13     at that Section, is there an underline under the word  
14     "boring" to indicate that that's included in the  
15     statute?

16           A     That appears to be the case.

17           Q     Okay, now the site definition Section also  
18     includes tunneling; is that correct?

19           A     Yes, it does.

20           Q     It also includes scraping?

21           A     Yes.

22           Q     Does it also include cable or pipe plowing?



1           A     Yes, it does.

2           Q     And it also includes the word "driving"?

3           A     Correct, yes.

4           Q     And is the word "saw cutting" included

5     within the definition of excavation?

6           A     No, it is not.

7           Q     Now are you also familiar with 220 ILCS

8     50/2.4, the definition of demolition?

9           A     Yes.

10          Q     Okay. Within the definition Section of

11     demolition is the word saw cutting in that Section?

12          A     No, it's not.

13          Q     Now with respect to Section four of the

14     Act, are you familiar with that section as well?

15          A     Yes, I am.

16          Q     And if we call the Act -- if we make

17     reference to it, the Act, we're referring to Illinois

18     Underground Utility Facilities Damage Prevention Act;

19     is that correct?

20          A     Yes.

21          Q     Now Section four, that introductory

22     Section says every person who engages in

1 non-emergency excavation or demolition shall; do you  
2 see that?

3 A Yes.

4 Q Okay, so the key is you have to engage in  
5 non-emergency excavation or demolition, correct?

6 A That's correct.

7 Q And if a person is not engaged in  
8 non-emergency excavation or demolition, that person  
9 does not have to contact the statewide one-call  
10 system; is that correct?

11 A That's correct.

12 Q And for purposes of the statewide one-call  
13 system is sometimes referred to as J.U.L.I.E.; is  
14 that correct?

15 A That's correct.

16 Q Now, Section -- if we refer to Section 11  
17 of the Act, that Section contains various paragraphs  
18 that are penalty Sections as provided by the Act; is  
19 that correct?

20 A Yes.

21 Q Okay. And the Section 11(a) of the Act,  
22 that's a penalty Section; is that correct?

1           A     Yes.

2           Q     And Section 11(a) refers to Section four of  
3     the Act; is that correct?

4           A     Yes, it does.

5           Q     Now if a person is not engaged in  
6     non-emergency excavation or demolition, does that  
7     person willfully fail to comply with Section 11(a) of  
8     the Act?

9           A     If they weren't engaged in any excavation  
10    or demolition they wouldn't have been required to  
11    provide notice under Section 4; therefore,  
12    Section 11(a) would not be applicable.

13          Q     Now let's take a look again at  
14    Section 50/2.3, the definition Section of Excavation.  
15    Does the definition of excavation, Section 50/2.3  
16    define burial depth?

17          A     No, it does not.

18          Q     Does the Definition Section of Section  
19    50/2.3 Excavation specify any depth for which an  
20    activity becomes excavation?

21          A     No, it does not.

22          Q     Does Section 50/2.4 Demolition define

1 burial depth?

2 A No, it does not.

3 Q Does Section 50/2.4 Demolition specify any  
4 depth for which an activity becomes demolition?

5 A No.

6 Q Now has Quality Saw & Seal, Inc. maintained  
7 that saw cutting of pavement is not excavation?

8 A They have indicated that.

9 Q Okay. Have they also indicated that saw  
10 cutting of pavement is not demolition?

11 A I believe they've indicated that as well.

12 Q Now let's go back to the Definition Section  
13 again, Section 50/2.3 excavation. There's a word  
14 that's referred to in the definition section "rock";  
15 is that correct?

16 A Yes.

17 Q Okay, to your knowledge is a rock a  
18 relatively hard, natural-forming mass of mineral or  
19 petrified matter such as stone?

20 A Sure.

21 Q Rock is usually found within the subsurface  
22 of the Earth; is that correct?

1           A     Yes.

2           Q     Now are you familiar with concrete  
3     pavement?

4           A     I'm not sure what you mean by familiar.

5           Q     Well, have you had any courses in material  
6     analysis of concrete pavement?

7           A     No, not concrete pavement.

8           Q     Okay, have you had any classes or any  
9     training regarding analysis of concrete pavement?

10          A     No.

11          Q     To your knowledge, is concrete construction  
12     material consisting of a conglomerate of gravel,  
13     pebbles, broken stone or slag in a mortar or cement  
14     matrix?

15          A     Yes.

16          Q     Okay. To your knowledge the concrete  
17     pavement is a man-made material?

18          A     Yes, it is.

19          Q     You can't dig in the Earth's surface and  
20     find concrete pavement, correct?

21          A     Not naturally occurring, no.

22          Q     It's something that's put together and

1 mixed -- and is being mixed usually when it's being  
2 brought out to a site where it's been poured; is that  
3 correct?

4 A Sure.

5 Q Okay, now it's your Direct Testimony that  
6 -- that if you refer to page four that excavation  
7 appears to include saw cutting of a paved road --

8 A Yes.

9 Q -- (continued) at line 126; is that  
10 correct?

11 A That's correct.

12 Q Now is that an opinion that you get, that  
13 excavation appears to include saw cutting of a paved  
14 road?

15 A Yes, that's my opinion.

16 Q And that opinion that you have, was that  
17 based on any reasonable degree of civil engineering  
18 certainty?

19 A It's not based on civil engineering  
20 analysis, no.

21 Q Okay. Was it your opinion that excavation  
22 appears to include saw cutting of a paved road based

1     upon any standard treatise, such as the Standard  
2     Specifications for Road and Bridge Construction  
3     adopted January 1, 2002 by the Illinois Department of  
4     Transportation?

5             A     No.

6             Q     Now your Direct Testimony - again page  
7     four, page five - is it your Direct Testimony that it  
8     could be argued that saw cutting of a paved road,  
9     rending/removing a structure should be considered  
10    demolition under the Act?

11            A     That's what my testimony says.

12            Q     All right. And was your opinion that it  
13    could be argued that saw cutting of a paved road,  
14    rending/removing a structure should be considered  
15    demolition under the Act based upon a reasonable  
16    degree of civil engineering, sir?

17            A     It was not based on a civil engineering  
18    analysis.

19            Q     Okay. Was it your opinion that it could be  
20    argued that saw cutting of a paved road  
21    rending/removing of a structure should be considered  
22    demolition under the Act based upon any standard

1     treatise, such as the Standard Specifications for  
2     Road and Bridge Construction adopted January 1, 2002  
3     by the Illinois Department of Transportation?

4             A     No.

5             Q     Are you familiar with saw cutting that's  
6     performed for traffic control signal activation in  
7     the roadway?

8             A     Not really.

9             Q     Okay. Do you have any knowledge that when  
10    new concrete pavement is designed with saw cuts in  
11    order to locate connection joints in the roadway?

12            A     Would you read the question again?

13            Q     Sure. Is new pavement designed with saw  
14    cuts in order to locate connection joints in the  
15    roadway?

16            A     It may be.

17            Q     Okay, you don't have any personal knowledge  
18    of that?

19            A     No.

20            Q     All right. You testified at the Advisory  
21    Committee Hearing on January 13, 2005 in Chicago; is  
22    that correct?



1           A     I presented Staff's findings.

2           Q     Okay. And at that time, your findings were  
3 not based upon any reasonable degree of civil  
4 engineering certainty; is that correct?

5           A     My finding were not based on civil  
6 engineering analysis.

7           Q     And your findings were not based on any  
8 standard treatise such as the Standard Specifications  
9 for Road and Bridge Construction adopted January 1,  
10 2002 by the Illinois Department of Transportation?

11          A     No, they were not.

12          Q     Okay, now, I want you to take a look again  
13 at Section -- the definition Section, Section 2.3.  
14 Do you have it?

15          A     Uh-huh.

16          Q     Okay, now --

17          MS. BUELL: As presently adopted?

18          MR. BUELL: As presently adopted,  
19 Section 50/2.3.

20          MS. BUELL: Thank you.

21          BY MR. BUELL:

22          Q     In that Section it has the word "driving";

1 is that correct?

2 A Yes.

3 Q Okay. Now with respect to excavation that

4 word "driving," that could include pile driving; is

5 that correct?

6 A Yes.

7 Q It may appear that that word "driving"

8 includes pile driving, correct?

9 A Yes.

10 Q That word driving could also include the

11 operating of a motorized vehicle such as a crane,

12 backhoe or truck in an area where work is being done;

13 is that correct?

14 A I probably would not interpret it that way.

15 Q Okay, but it just has the word driving?

16 A That's right.

17 Q Okay. It could be a word that could be

18 interpreted various different ways, correct?

19 A It could be.

20 Q Okay. So as you sit here today, you cannot

21 testify, can you, based upon any reasonable degree of

22 engineering certainty whether that word "driving"

1     refers only to motorized vehicles traveling over a  
2     roadway?

3             A     I don't know that there would be  
4     engineering analysis involved in that.  It would be a  
5     reading of the statute.

6             Q     Well, you can't testify with any reasonable  
7     degree of certainty whether that term driving  
8     includes motorized vehicles?

9             MS. BUELL:  I'm going to object to that  
10    question.  I believe that calls for a legal  
11    conclusion.

12            JUDGE YODER:  Sustained.

13    BY MR. BUELL:

14            Q     Well, the term "driving," that could lead  
15    to some type of guess or speculation as to really  
16    what that term means in the statute, couldn't it?

17            MS. BUELL:  I'm going to object to that, too.  
18    That's just a different way of asking him what his  
19    legal opinion of the word "driving" in the statute  
20    is.

21            MR. BUELL:  Well, he's trying to render a legal  
22    opinion with respect to excavation.  And I'm just --

1           MS. BUELL: In any event he's already answered  
2 the question. That's been asked three times now.

3           JUDGE YODER: What he thinks or how he  
4 interprets the word "driving," I guess he interprets  
5 the word "excavation" one way and we have a different  
6 interpretation.

7           MR. BUELL: Okay.

8           JUDGE YODER: Can I --

9 BY MR. BUELL:

10           Q     Reading the statute, you can interpret the  
11 term "driving" in various different ways depending on  
12 how you would look at that term, correct?

13           A     I probably could.

14           Q     So in other words, you could have one  
15 interpretation, I could have a different  
16 interpretation?

17           A     That's correct.

18           Q     And those interpretations may lead to some  
19 guess or speculation as to really what that word  
20 meant in the statute with respect to the term  
21 "driving" in the Section 50/2.3?

22           A     Certainly.

1           Q     Okay.  Now, if Quality did not violate  
2     Section 4(d), then Quality would not have willfully  
3     violated Section 11(a) of the Act; is that correct?

4           A     Well, the penalty which Staff assesses  
5     looks for a willful violation of Section 4(d) not for  
6     a willful violation of Section 11(a).

7                     If it was Section 11(a), that's what  
8     gives the Commission the authority to assess a  
9     penalty for a violation of Section 40.

10          Q     If Quality did not violate Section 4(d),  
11     there would be no need to assess a penalty under  
12     11(a)?

13          A     That's correct.

14          Q     And if Quality did not engage non-emergency  
15     excavation or demolition, then Quality would not have  
16     had to contact the statewide one-call system pursuant  
17     to Section 4(d), correct?

18          A     Yes.  If they were not engaged in  
19     excavation, they would not need to call J.U.L.I.E.

20          Q     Now, your testimony, Direct Testimony on  
21     page seven, line 196, you testified that it is clear  
22     that on August 10, 2004 Quality was performing

1       excavation or demolition as defined in Sections 2.3  
2       and 2.4 in the Act. Do you see that?

3           A       Where is that again?

4           Q       Page number seven, line Number 196, 197,  
5       and 198.

6           A       Yes.

7           Q       And your testimony is that it is clear,  
8       correct?

9           A       Uh-huh.

10          Q       Okay, now earlier you rendered some  
11       opinions back on page four and page five that your  
12       testimony was that excavation appears to include saw  
13       cutting.

14                   Okay, the word "appear" leads to some  
15       degree of guess or speculation, doesn't it?

16          A       In that specific place it might have one  
17       meaning. Where I say "appears," that means it  
18       appears to me, which means that I believe that it is  
19       excavation.

20          Q       Okay. But it is not based upon any  
21       reasonable degree of engineering certainty, correct?

22          A       As I've indicated, there's no engineering

1 analysis which leads to that decision.

2 Q Okay, but the term that you used, "appear,"  
3 that basically could lead to guess or speculation  
4 depending on who reviewed it and the way it looks or  
5 was interpreted?

6 MS. BUELL: I think that question has been  
7 asked and answered. He has already indicated that it  
8 is his expert opinion that that's what the statute  
9 says.

10 Asked and answered.

11 JUDGE YODER: Sustained.

12 MR. BUELL: Okay.

13 BY MR. BUELL:

14 Q Now going on to page five where you have  
15 your direct -- where it says your direct testimony,  
16 that it could be argued that saw cutting of a paved  
17 road, rending/removing of a structure, should be  
18 considered.

19 Again, that is an answer that calls  
20 for some type of speculation or guess; does it not?

21 A I've indicated in my testimony that it can  
22 be considered demolition as well.

1           Q     Okay, but you cannot base it, as you sit  
2     here today, on any reasonable degree of engineering  
3     certainty?

4           A     As I've indicated before, that conclusion  
5     was not based on engineering analysis.

6           Q     That was just based on your interpretation  
7     of the statute?

8           A     That's correct.

9           Q     And just solely your interpretation?

10          A     No.

11          Q     You didn't have any treatises, any type of  
12     precedent that you could rely upon in order to reach  
13     that conclusion; is that correct?

14          A     No.

15          Q     Now --

16               MR. BUELL:   That's all the questions I have.

17               JUDGE YODER:   Any redirect, Ms. Buell?

18               MS. BUELL:   Yes, thank you, your Honor.

19                               REDIRECT EXAMINATION

20                               BY MS. BUELL:

21           Q     Mr. Riley, do you recall when Mr. Buell  
22     asked you about your qualifications as Manager of



1 J.U.L.I.E. Enforcement?

2 A Yes.

3 Q And is it correct that you became Manager  
4 of J.U.L.I.E. Enforcement in 2002?

5 A That's correct.

6 Q And was one of the requirements for that  
7 position that you be a civil engineer?

8 A No.

9 Q And you've performed in this capacity now  
10 for approximately three years?

11 A That's correct.

12 Q In your opinion after performing these  
13 responsibilities for three years, is a degree in  
14 civil engineering a necessity?

15 A No.

16 Q Now in the position of Manager of  
17 J.U.L.I.E. Enforcement, you're responsible for  
18 enforcing what laws?

19 A I'm responsible for enforcing the  
20 provisions of the Underground Utility Facilities  
21 Damage Prevention Act.

22 Q Are you responsible for enforcing any other

1 state laws?

2 A No.

3 Q Department of Transportation laws?

4 A No.

5 Q Are you responsible for enforcing any  
6 Federal laws?

7 A No.

8 Q Do you recall when Mr. Buell asked you  
9 about the definition of "Excavation" under  
10 Section 2.3 of the Act?

11 A Yes.

12 Q And do you recall that you indicated that  
13 saw cutting was not specifically listed in the  
14 definition?

15 A That's correct.

16 Q Now as Manager of the J.U.L.I.E.  
17 Enforcement Program, was your main responsibility  
18 enforcing the J.U.L.I.E. Act?

19 And in your opinion does Section 2.3,  
20 the definition of Excavation include saw cutting?

21 A Yes, it does.

22 Q And you've discussed this in your Direct

1     Testimony; have you not?

2             A     Yes.

3             Q     Do you recall when Mr. Buell asked you  
4     about the definition of demolition under Section 2.3  
5     of the Act -- I'm sorry, 2.4 of the Act?

6             A     Yeah, 2.4.

7             Q     And you responded that saw cutting was not  
8     specifically included in the definition of demolition  
9     under 2.4; is that correct?

10            A     That's correct.

11            Q     In your opinion as Manager of the  
12    J.U.L.I.E. Enforcement Program for over three years,  
13    do you believe that saw cutting meets the definition  
14    of demolition of under the Act?

15            A     Yes.

16            Q     And you've indicated such in your Direct  
17    Testimony; have you not?

18            A     That's correct.

19            Q     As such, Mr. Riley, is it your opinion that  
20    on August 10, 2004, Quality Saw was engaged in  
21    excavation or demolition in Highland Park?

22            A     Yes, they were.

1           Q     And as such, Mr. Riley, would it be  
2     appropriate to assess penalties under Section 11 of  
3     the Act against Quality Saw?

4           A     Yes.

5           MS. BUELL: I have no further questions, your  
6     Honor.

7           JUDGE YODER: Anything based on --

8           MR. BUELL: Yes.

9                         RECROSS EXAMINATION

10                        BY MR. BUELL:

11           Q     With respect to your opinions regarding saw  
12     cutting being excavation, your opinion is based upon  
13     the word that you used "appears" to include saw  
14     cutting of the paved road; is that correct?

15           A     Well, my opinion is not based on the word  
16     "appears."

17           Q     Well --

18           A     It's based on my reading of the Damage  
19     Prevention Act.

20           Q     But your testimony on direct examination on  
21     page four, line 126 makes specific reference to that  
22     excavation appears; is that correct, that you used

1 the word "appears"?

2 A That's correct.

3 Q And with respect to questions that were  
4 asked regarding demolition and saw cutting being  
5 related to demolition, it's your testimony on Direct  
6 Examination that it could be argued that saw cutting  
7 of a paved road should be considered.

8 So you used the words "could" and  
9 "should"?

10 A Uh-huh.

11 Q Is that correct?

12 A Yeah.

13 Q And that's your basis of your opinion the  
14 use of the words could or should be considered -- saw  
15 cutting should -- could and should be considered  
16 demolition under the Act; correct?

17 A As I said, the basis of my opinion is not  
18 based on the words "could" and "should" --

19 Q Well that's your answer --

20 A -- (continued) the basis of my opinion is  
21 my reading of the Damage Prevention Act.

22 MR. BUELL: Again, I'd ask that that answer be

1 stricken. It is nonresponsive to the question.

2 JUDGE YODER: I think he's answered the  
3 question that that's his interpretation.

4 MR. BUELL: Okay.

5 BY MR. BUELL:

6 Q My question was based on your Direct  
7 Examination. You used the words it could be argued  
8 that saw cutting of a paved road should be considered  
9 under the Demolition Act.

10 You used those words in your  
11 testimony?

12 A Yes.

13 Q And you would agree that if saw cutting is  
14 not an activity that's included within excavation or  
15 demolition under the Act, that Staff was in error  
16 when they assessed the penalty against Quality  
17 pursuing the Section 11 --

18 MS. BUELL: Asked and answered.

19 MR. BUELL: -- (continued) for violation of the  
20 Section --

21 MS. BUELL: I object.

22 MR. BUELL: -- for the --

1           MS. BUELL:  He's asked this question three or  
2   for times already.

3           JUDGE YODER:  Sustained.  Yes, I think we can  
4   all agree on the interpretation of the statute --

5           MR. BUELL:  Okay.

6           JUDGE YODER:  -- (continued) in that respect.

7           MR. BUELL:  I have nothing further.

8                         REDIRECT EXAMINATION

9                         BY MS. BUELL:

10           Q     Mr. Riley, when you use words in your  
11   Direct Testimony such as "appears" or "could" or  
12   "should," do those words indicate anything other than  
13   the fact that this is your opinion as Manager of the  
14   J.U.L.I.E. Enforcement Program?

15           MR. BUELL:  I'm going to object.  I think the  
16   testimony -- the Direct Testimony speaks for itself.  
17   His answers that he's given have already spoken with  
18   respect --

19           JUDGE YODER:  I'll sustain because I think he  
20   has indicated why he used those words.

21           MS. BUELL:  I have nothing further, your Honor.

22           JUDGE YODER:  All right.  Do you have any other

1 witnesses to present, Ms. Buell?

2 MS. BUELL: Yes, your Honor. Staff calls  
3 Mr. Ted Andersen to the stand.

4 JUDGE YODER: All right, Mr. Andersen, would  
5 you stand and raise your right hand, please.

6 (Whereupon the Witness was sworn  
7 by the Administrative Law  
8 Judge.)

9 JUDGE YODER: All right, please proceed,  
10 Ms. Buell.

11 T E D A N D E R S O N  
12 having been first duly sworn by the Administrative  
13 Law Judge, witnesseth and saith as follows:

14 DIRECT EXAMINATION

15 BY MS. BUELL:

16 Q Good morning, Mr. Andersen.

17 A Good morning.

18 Q Would you please state your full name and  
19 spell your last name for the record.

20 A Ted Alan Andersen, A-N-D-E-R-S-E-N.

21 Q Mr. Andersen, by whom are you employed?

22 A I'm a Special Claims Investigator for North



1 Shore Gas Company, a subsidiary of People's Energy  
2 Corporation.

3 Q And is it correct today that you're  
4 testifying on behalf of the Illinois Commerce  
5 Commission?

6 A That's correct.

7 Q And do you have before you a document which  
8 has been marked for identification as ICC Staff  
9 Exhibit 2.0 which consists of a cover page, five  
10 pages of narrative testimony, Attachments 2.1 through  
11 2.5 and is entitled Direct Testimony of Ted Andersen?

12 A Yes, I do.

13 Q Is this a true and correct copy of the  
14 direct testimony that you've prepared for this  
15 proceeding?

16 A Yes, it is.

17 Q Do you have any corrections to make to your  
18 prepared Direct Testimony?

19 A Yes, I do. On line 77, I say I believe  
20 that the pictures have been destroyed and I have  
21 later determined that not to be true.

22 Q So on line 77 when you say unfortunately

1 pictures of the incident are not longer available;  
2 that statement is no longer true?

3 A Yeah. At the time of the written  
4 testimony, I believed that the pictures had been  
5 destroyed but have later determined that to not be  
6 true. We were able to locate those photos.

7 Q Okay. But at the time you prepared your  
8 written Direct Testimony you believed that no  
9 photographs were available?

10 A That's accurate.

11 Q Okay. Other than line 77, is the  
12 information contained in ICC Staff Exhibit 2.0 and  
13 the accompanying attachments true and correct to the  
14 best of your knowledge?

15 A Yes.

16 Q And if I were to ask you the same questions  
17 today, would your responses be the same?

18 A Yes.

19 MS. BUELL: Your Honor, at this time I move for  
20 admission into the record of Mr. Andersen's Prepared  
21 Direct Testimony marked as ICC Staff Exhibit 2.0  
22 including Attachments 2.1 through 2.5, and I note for

1 the record that this is the same document that was  
2 originally filed via the Commission's e-Docket system  
3 on August 3, 2005.

4 JUDGE YODER: Any objection to the admission of  
5 those Exhibits?

6 MR. BUELL: No, no objection.

7 JUDGE YODER: All right. Exhibits 2.0 and  
8 Attachments 2.1 through 2.5 will be admitted into  
9 evidence then with the correction on line 77 of the  
10 admission Mr. Andersen indicated on the record  
11 regarding the pictures.

12 MS. BUELL: Thank you, your Honor.

13 (Whereupon ICC Staff Exhibit  
14 Number 2.0 and Attachments 2.1  
15 through 2.5 were admitted into  
16 the record.)

17 JUDGE YODER: Do you have any other questions  
18 of Mr. Andersen?

19 MS. BUELL: No, I do not, your Honor. I tender  
20 Mr. Andersen for Cross.

21 CROSS EXAMINATION

22 BY MR. BUELL:

1           Q     Mr. Andersen, your Direct Testimony does  
2     not identify what your educational background is.  
3     Could you tell us what that is?

4           A     Yes. I graduated from the University of  
5     Wisconsin Parkside in Kenosha, Wisconsin, with a  
6     double major: One -- one of the majors was Business  
7     Administration and the other was in Labor and  
8     Industrial Relations.

9           Q     Okay. Have you taken any courses in civil  
10    engineering?

11          A     No.

12          Q     And have you ever been employed by anyone  
13    in a capacity of doing any work which would be in the  
14    civil engineering field?

15          A     No.

16          Q     Now you prepared an incident report  
17    following the damage to the North Shore facility; is  
18    that correct?

19          A     Yes.

20          Q     Were you present at the site at any time?

21          A     No.

22          Q     Your answer was "no"?

1           A     Yes, I was not at the site.

2           Q     Okay. The information that you prepared in  
3     the Underground Utility Facilities Damage Prevention  
4     Incident Report, was that information that was given  
5     to you by someone else at North Shore Gas?

6           A     Yes.

7           Q     And you testified that you had photographs;  
8     is that correct?

9           A     Yes, I do.

10          Q     And those were taken by somebody from North  
11     Shore Gas?

12          A     Yes.

13          Q     Have you ever reviewed any photographs that  
14     were taken by Quality Saw & Seal?

15          A     Yes.

16          Q     And do those photographs that you reviewed  
17     from Quality Saw & Seal reflect basically what was  
18     seen in the photographs that were taken by North  
19     Shore Gas?

20          A     Essentially.

21          Q     When you say "essentially," basically they  
22     show the same surface, they show the pavement and

1     where the service is in relationship to the pavement;  
2     is that correct?

3             A     That's correct.

4             Q     Okay. Now on the report -- you've got a  
5     copy of the report in front of you which was attached  
6     with your testimony; is that correct?

7             A     Yes.

8             Q     And in the report, you list the facility  
9     that was damaged as a three-quarter inch gas service;  
10    is that correct?

11            A     Yes.

12            Q     And you list the depth of the facility at  
13    being eight inches?

14            A     Yes.

15            Q     Now, was any of the information given to  
16    you by North Shore Gas that the facility was eight  
17    inches deep?

18            A     Yes.

19            Q     And was information provided to you that  
20    the pavement was nine inches thick?

21            A     That was not included in any information  
22    from North Shore Gas employees.

1           Q     Okay.  And did you subsequently receive  
2     some information from the Illinois Commerce  
3     Commission that the depth of the pavement was nine  
4     inches?

5           A     I read that as part of one of your  
6     witness's Direct Testimony.

7           Q     All right, and which witness was that?

8           A     Ummm, I'm not sure.

9           Q     Okay.  Have you read all the testimony of  
10    all of the witnesses at Quality Saw & Seal, Inc.?

11          A     No.

12          Q     All right.  When you say one of the  
13    witnesses, do you recall which witness's testimony  
14    you reviewed?

15          A     No.

16          Q     Well, are you familiar with the Illinois  
17    Underground Utility Facilities Damage Prevention Act?

18          A     Somewhat.

19          Q     When you say "somewhat," are you familiar  
20    with Section 50/2.3 entitled Excavation?

21          A     Yes.

22          Q     Are you familiar with Section 50/2.4

1       entitled Demolition?

2               A       Somewhat.

3               Q       Okay.  Not as familiar then with the  
4       Demolition Section as you are with Excavation; is  
5       that correct?

6               A       That's correct.

7               Q       And are you familiar with the Act when it  
8       was amended July 1, 2002?

9               A       I'm aware that it was amended July 1st of  
10       '02.

11              Q       Okay.  Do you have a copy of the Act in  
12       front of you?

13              A       No.

14              Q       Do you know if the word "saw cutting" is  
15       included within the Definition Section of 50/2.3?

16              A       I do not have the Act in front of me, so  
17       I'm not certain whether saw cutting is included.

18              Q       Okay.  Do you know if Section 50/2.3  
19       entitled Excavation is silent on burial depth?

20              A       I don't believe the Act addresses depth at  
21       all.

22              Q       Okay.  And are you familiar with the



1     Standard Specifications for Road and Bridge  
2     Construction adopted January 1, 2002 by the Illinois  
3     Department of Transportation?

4             A     No.

5             Q     Now, you're familiar with the term "rock,"  
6     are you not?

7             A     I believe I know what rock is.

8             Q     And would you agree that a rock is a  
9     relatively hard, naturally formed mass of mineral or  
10    petrified matter such as stone?

11            A     Yes.

12            Q     Okay. Are you familiar with the term  
13    "concrete pavement"?

14            A     Yes.

15            Q     And would you agree that concrete is the  
16    construction of material consisting of a conglomerate  
17    of gravel, pebbles, broken stone or slag in a mortar  
18    or cement matrix?

19            A     Yes.

20            Q     Now, did you receive a document request  
21    from my office on behalf Quality seal and saw, Inc.?

22            A     Yes.

1           Q     And with respect to that document request,  
2     you produced some documents in response to that; is  
3     that correct?

4           A     Yes.

5           Q     And do you have a copy of those documents  
6     in front of you?

7           A     Yes, I do.

8           Q     Okay. One of those documents was a  
9     document which identified the date a service was  
10    installed at or near 2180 Kipling Lane, Highland  
11    Park, Illinois; is that correct?

12          MS. BUELL: Excuse me, I have a question: Are  
13    you offering new information into the record?

14          MR. BUELL: No, that was part of the  
15    witness's -- one of the Quality witness's Exhibits.

16          MS. BUELL: So you plan to offer it --

17          MR. BUELL: Right.

18          MS. BUELL: -- (continued) when you offer  
19    Quality's testimony?

20          MR. BUELL: Right.

21          MS. BUELL: Okay. Can you refer him to a  
22    specific Attachment, to a specific piece of

1 testimony?

2 MR. BUELL: I'm looking at what's been  
3 identified as Document B which is the document name  
4 on top, untitled, and it has a reference to 2180  
5 Kipling Lane.

6 MS. BUELL: Who's testimony?

7 MR. BUELL: It's in the testimony of Thomas  
8 Hahn.

9 MS. BUELL: I'm sorry, what Attachment?

10 MR. BUELL: It's attached as Exhibit 3.8, the  
11 last page.

12 Do you have a copy of that document?

13 THE WITNESS: Well, I'm not sure which document  
14 to which you're referring. Does it have some  
15 printing on it, some hand printing?

16 MR. BUELL: It does. It has hand printing on  
17 it. It looks like the first hand printing is the  
18 Number 860.

19 THE WITNESS: Okay, yes, I have that document  
20 in front of me.

21 BY MR. BUELL:

22 Q Okay, that is a document which would

1     indicate that the date that the service was installed  
2     was 1977; is that correct?

3             A     That's correct.

4             Q     Okay. And you're familiar with the minimum  
5     Federal Safety Standards regarding the installation  
6     of buried services, in particular Section 192.361 for  
7     service line installation; are you not?

8             A     I am not familiar.

9             Q     Okay. So you're not aware that various  
10    facilities have to be installed with a minimum cover  
11    in streets and roads?

12            MS. BUELL: Objection; asked and answered.

13    He's not familiar with the statute.

14            JUDGE YODER: Sustained.

15    BY MR. BUELL:

16            Q     Now since you were not at the site? You  
17    have no personal knowledge of the type of saw blade  
18    that was used at that location; is that correct?

19            A     Well, I have a photo of the machine and of  
20    the saw blade.

21            Q     Okay, but just looking at the photo, could  
22    you tell what the size of the blade was?

1           A     No.  There's not a photo that has a ruler  
2     in the picture next to the saw blade.

3           Q     Okay.  So you could just visually see what  
4     the type of equipment it is?

5           A     Correct.

6           Q     Okay.  Now what I want you to do -- you  
7     have your testimony in front of you, do you not?

8           A     Yes, I do.

9           Q     And if you refer to page four, beginning  
10    with line Number 95 through 97, do you have that in  
11    front of you?

12          A     Yes.

13          Q     Okay.  You testified under direct  
14    examination that when a saw cutter's blade goes  
15    beyond the thickness of the pavement and penetrates  
16    to the soil below, it becomes an excavation and thus  
17    requires a call to J.U.L.I.E.; is that correct?

18          A     Yeah, that's my testimony.

19          Q     Now just so we understand you, are you  
20    saying that until the saw cutter's blade goes beyond  
21    the thickness of the pavement - that's the concrete  
22    pavement - and penetrates the soil below, saw cutting

1 does not become excavation?

2 A As I stated when a saw cutter's blade goes  
3 beyond the thickness of the pavement and penetrates  
4 the soil below, in my opinion it becomes an  
5 excavation.

6 Q Okay. Were you provided with any  
7 information that the facility that was damaged here,  
8 this three-quarter inch plastic service was eight  
9 and-a-half inches within the concrete pavement?

10 A Well, first of all, it wasn't a plastic  
11 service as you've stated, it was a three-quarter inch  
12 steel service.

13 Q All right. So we'll strike the word  
14 plastic out of there. It is three-quarter inch  
15 steel.

16 Did you read or were you provided with  
17 any information that that service was eight  
18 and-a-half inches within the concrete pavement?

19 A I believe that Quality has alleged that the  
20 pipe was embedded in the pavement. But the pictures  
21 that I have viewed don't support that contention.

22 Q Okay, but let's assume that the steel

1 service is embedded in the pavement at eight  
2 and-a-half inches, when it is hit by the blade, it's  
3 your testimony that until that blade goes into the  
4 soil, that is not excavation; is it not?

5 A I'm not comfortable making the assumption  
6 that you're asking me to make.

7 Q Well, I'm basing it upon your Direct  
8 Testimony. Because you've testified on direct  
9 testimony that when the saw cutter's blade goes  
10 beyond the thickness of the pavement and penetrates  
11 the soil, it becomes excavation.

12 My question to you is: Until that  
13 blade penetrates the soil, there is no excavation?

14 MS. BUELL: Objection. I think he's already  
15 stated that he is not comfortable agreeing with that  
16 or answering that question.

17 It's the same question that was asked  
18 twice before.

19 JUDGE YODER: Well, he's given his answer  
20 and -- but his testimony is in the record. So each  
21 party have interpret the testimony. He's said what  
22 he has said on state lines 95, 96, and 97.

1                   And Mr. Buell wants him to interpret  
2   that.  I think he's said what he said, and you're  
3   asking him to restate it.

4           MR. BUELL:  Well, I'm asking him to --

5           JUDGE YODER:  You're asking him to state the  
6   opposite of what he's saying.  You want the  
7   corollary.

8           MS. BUELL:  Correct.

9           JUDGE YODER:  And he does --

10          MS. BUELL:  And I think he's said it three  
11   times now.

12          JUDGE YODER:  I understand your point, but he  
13   doesn't need to say it.  You can argue based on what  
14   he's got in his testimony, the corollary.

15          MR. BUELL:  Okay.

16   BY MR. BUELL:

17          Q     Now I want to refer you to page four again  
18   of your testimony, beginning with line 105 through  
19   line 108?

20          A     Okay.

21          Q     All right.  Now you, in your testimony you  
22   state that there are ways saw cutters could avoid



1     damaging facilities or causing harm. Do you see  
2     that?

3             A     Yes.

4             Q     And one of the ways is by not going  
5     completely -- or not cutting completely through the  
6     pavement; is that correct?

7             A     In my opinion, that would be a way to avoid  
8     damaging the line that was below the pavement.

9             Q     Now, do you know if Quality did not  
10    completely cut through the pavement at the time that  
11    this incident occurred?

12            A     Based on the pictures that I have viewed,  
13    it appears that they completely cut through the  
14    entire thickness of the pavement.

15            Q     All right. But my question was to you was:  
16    You don't know whether they attempted to come up and  
17    go over any type of facilities while they were saw  
18    cutting; is that correct?

19            A     I don't know if they attempted to do that.

20            Q     All right. Now with respect to potholing,  
21    you indicate in your direct testimony that you can  
22    pothole on each side of the roadway; is that correct?

1           A     Yes.

2           Q     Okay. And to pothole in concrete, you'd  
3 have to dig a hole in the concrete; is that correct?

4           A     I suspect, yes.

5           Q     Do you have any personal knowledge whether  
6 Quality did not pothole on each side of the roadway?

7           A     It is my belief that they did not pothole.

8           Q     On each side of the roadway?

9           A     On either side of the roadway.

10          Q     Now, your opinion which you gave on page  
11 34, your testimony is that a saw cutter's blade that  
12 goes through the thickness of pavement and penetrates  
13 the soil then becomes excavation.

14                   Was that based upon any reasonable  
15 degree of engineering certainty?

16          A     No, it's not based on any engineering  
17 certainty.

18          Q     Okay. Now, going back to your testimony on  
19 page three, line 89 through 92 where you have:  
20 According to the definition of excavation contained  
21 in the Illinois Underground Utility Facilities Damage  
22 Prevention Act, saw cutting is clearly an operation

1       which requires a call to J.U.L.I.E.; do you see that?

2           A     Yes.

3           Q     Did you have the statute in front of you at  
4       the time you prepared that answer?

5           A     Yes.

6           Q     Okay.  And when you gave that answer where  
7       you say saw cutting is clearly an operation, was that  
8       answer based upon any reasonable degree of  
9       engineering certainty?

10          A     No.

11          Q     Was that answer based upon any treatise  
12       which is a treatise that's relied upon by those  
13       engaged in civil engineering in order to arrive at  
14       that answer?

15          A     It was not based on any type of engineering  
16       certainty.

17          Q     Okay.  It was just based upon what your  
18       feeling was regarding this activity?

19          A     It was my interpretation of the Act, not my  
20       feeling.

21          Q     And when you interpreted the Act, you did  
22       not find the word saw cutting in Section 50/2.3; is

1       that correct?

2           A     I do not believe saw cutting was  
3       referenced, but I don't have the Act in front of me.

4           Q     Okay.  You don't have it in front of you  
5       today, but you had it at the time you did your  
6       testimony?

7           A     That's correct.

8           MR. BUELL:  That's all the questions I've got.

9           JUDGE YODER:  Any redirect, Ms. Buell?

10          MS. BUELL:  No redirect, your Honor.

11          JUDGE YODER:  All right.  Can I excuse  
12       Mr. Andersen?

13          MS. BUELL:  Yes.

14          JUDGE YODER:  Then I assume we're done.

15                    Mr. Andersen, you are excused.

16          MR. ANDERSEN:  Okay, can I stay on and listen  
17       in to the testimony?

18          JUDGE YODER:  Sure.  Any further evidence,  
19       Ms. Buell, on behalf of Staff?

20          MS. BUELL:  No, your Honor.

21          JUDGE YODER:  Do you rest?

22          MS. BUELL:  I do.

1 JUDGE YODER: All right. Mr. Buell, do you  
2 have anything to present on behalf of Quality Saw &  
3 Seal?

4 MR. BUELL: Yes, I do. First of all, we would  
5 be calling Mike Seals as a witness on behalf of  
6 Quality.

7 JUDGE YODER: All right, Mr. Seals, would you  
8 stand and raise your right hand, please.

9 MR. SEALS: Yes.

10 (Whereupon the Witness was sworn  
11 by the Administrative Law  
12 Judge.)

13 JUDGE YODER: All right, please proceed.

14 MR. BUELL: All right.

15 M I K E S E A L S

16 having been first duly sworn by the Administrative  
17 Law Judge, witnesseth and saith as follows:

18 DIRECT EXAMINATION

19 BY MR. BUELL:

20 Q Okay, Mr. Seals, you're testifying here  
21 today on behalf Quality Saw & Seal, Inc.?

22 A Correct.

1           Q     Okay.  And are you employed by Quality Saw  
2     & Seal, Inc.?

3           A     Correct.

4           Q     And you have in front of you your Direct  
5     Testimony; is that correct?

6           A     Yes.

7           Q     Is that testimony true and correct?

8           A     Yes, it is.

9           Q     And along with your testimony, which has  
10    been identified as Quality Exhibit 2.0, were there  
11    various photographs that were attached to that  
12    testimony including Quality Exhibits 2.1, 2.2, 2.3,  
13    and 2.4; is that correct?

14          A     Correct.

15          Q     And those photographs truly and accurately  
16    portrayed the condition as it existed on August 10,  
17    2004 at or near 2180 Kipling Lane, Highland Park; is  
18    that correct?

19          A     Yes, it is correct.

20               MR. BUELL:  Your Honor, at this time I'd like  
21    to offer as evidence Quality's Exhibit 2.0 including  
22    the Attachments which are Quality Exhibit 2.1, 2.2,

1       2.3, and 2.4 into evidence as Quality Exhibits.

2               JUDGE YODER: Any objection to those exhibits,  
3       Ms. Buell?

4               MS. BUELL: No, objection, your Honor. I'm  
5       just not certain whether this was filed.

6               MR. BUELL: Well, let me just put on the record  
7       that it was filed on August 10, 2005 with the Chief  
8       Clerk's Office at the Illinois Commerce Commission.

9               JUDGE YODER: All right, no objection then?

10              MS. BUELL: No objection, your Honor.

11              JUDGE YODER: Exhibit 2.0 with Attachments, I  
12       believe it's 2.1 through 2.4, will be admitted into  
13       evidence in this Docket then.

14                               (Whereupon Quality Exhibit  
15                               Numbers 2.0 with Attachments  
16                               2.1, 2.2, 2.3, and 2.4 were  
17                               admitted into the record.)

18              JUDGE YODER: Do you tender Mr. Seals?

19              MR. BUELL: I tender Mr. Seals.

20              JUDGE YODER: All right. Do you have any  
21       questions for Mr. Seals?

22              MS. BUELL: Staff has no cross for Mr. Seals,

1     your Honor.

2             JUDGE YODER:  I have I think one question:

3                             EXAMINATION

4                             BY JUDGE YODER:

5             Q     Mr. Seals, you testified that you were the  
6     operator of the saw cutting machine in question; is  
7     that correct?

8             THE WITNESS:  That's correct.

9             JUDGE YODER:  All right.  And it appears from  
10    the pictures that it was basically a square hole that  
11    was being cut into the pavement?

12            THE WITNESS:  Yes, patches.

13            JUDGE YODER:  Okay.  And was then a -- I call  
14    it a lateral cut or a cross, a corner to corner cut  
15    made where the gas line in question became damaged;  
16    is that correct?

17            THE WITNESS:  I believe it would be a lateral  
18    cut.

19            JUDGE YODER:  Okay, so you'd made four cuts and  
20    then were going across, like from corner to corner?

21            THE WITNESS:  Correct.  It was more like a box  
22    in that area.



1 JUDGE YODER: I'm just looking at your picture,  
2 Exhibit 2.4 and the angle of the cut in the pipe. It  
3 looks like it was going crosswise; is that correct?  
4 THE WITNESS: Correct.  
5 JUDGE YODER: And you were observed -- you were  
6 there at the scene and there appeared to be on your  
7 picture some yellow -- I would call them arrows in  
8 the pavement and then across what might be on the  
9 sidewalk, like in 2.2 it's fairly visible, you were  
10 able to observe those?  
11 THE WITNESS: Correct.  
12 JUDGE YODER: Okay. I don't have any other  
13 questions. Do you have anything based on --  
14 MR. BUELL: I have no further questions.  
15 JUDGE YODER: Do you have any other evidence  
16 you wish to present, Mr. Buell?  
17 MR. BUELL: I don't. At this time, your Honor,  
18 we'd like to call Thomas Hahn.  
19 JUDGE YODER: All right, Mr. Hahn, would you  
20 stand and raise your right hand, please.  
21 MR. HAHN: Okay.  
22

1 (Whereupon the Witness was sworn  
2 by the Administrative Law  
3 Judge.)

4 JUDGE YODER: All right, please proceed.

5 T H O M A S H A H N

6 having been first duly sworn by the Administrative  
7 Law Judge, witnesseth and saith as follows:

8 DIRECT EXAMINATION

9 BY MR. BUELL:

10 Q Mr. Hahn, do you have in front of you your  
11 Direct Testimony?

12 A Yes, I do.

13 Q Okay. And that testimony, does it truly  
14 and correctly reflect your testimony?

15 A Yes, it does.

16 Q Are there any changes that need to be made  
17 to your testimony?

18 A No, there is not.

19 Q And you've reviewed the testimony with the  
20 attached exhibits to it; is that correct?

21 A Yes, I have.

22 Q Beginning with Quality Exhibit 3.1 through

1 3.8; is that correct?

2 A Let me see here, let me double check. I  
3 believe so, yes.

4 Q Okay. And this exhibit, Quality Exhibit  
5 3.0 including the Attachments 3.1 through 3.8 was filed  
6 with the Chief Clerk's Office on August 10, 2005?

7 A Correct.

8 MR. BUELL: Your Honor, at this time I'd like  
9 to offer into evidence the testimony of Thomas Hahn  
10 identified as Quality Exhibit Number 3.0 including  
11 attached exhibits -- Quality Exhibits 3.1 through 3.8  
12 into evidence.

13 MS. BUELL: I only have Exhibits 3.1 through  
14 3.7; what is 3.8?

15 JUDGE YODER: 3.8 was the one we referenced  
16 earlier. You might have pulled it off.

17 MS. BUELL: Yes, I did. Okay, thank you.

18 JUDGE YODER: Any objection then to Exhibit 3.0  
19 and Attachments 3.1 through 3.8?

20 MS. BUELL: No.

21 JUDGE YODER: Without objection then those will  
22 be admitted into evidence in this docket.

1 (Whereupon Quality Exhibit  
2 Number 3.0 with Attachments 3.1  
3 through 3.8 was admitted into  
4 the record.)

5 JUDGE YODER: Do you tender Mr. Hahn?

6 MR. BUELL: I tender Mr. Hahn, your Honor.

7 MS. BUELL: Staff has no cross of Mr. Hahn,  
8 your Honor.

9 JUDGE YODER: All right. Do you have any other  
10 evidence to present?

11 MR. BUELL: Your Honor, I'd like to call at  
12 this time James Prola.

13 MR. HAHN: Can I go back to work?

14 JUDGE YODER: Is that Mr. Hahn? Yes, you can  
15 be excused. Thank you, Mr. Hahn.

16 MR. HAHN: Bye now.

17 JUDGE YODER: Mr. Prola, would you stand and  
18 raise your right hand please.

19 (Whereupon the Witness was sworn  
20 by the Administrative Law  
21 Judge.)

22 JUDGE YODER: All right, please proceed.

1 J A M E S P R O L A

2 having been first duly sworn by the Administrative  
3 Law Judge, witnesseth and saith as follows:

4 DIRECT EXAMINATION

5 BY MR. BUELL:

6 Q Mr. Prola, did you have occasion to review  
7 your Direct Testimony identified as Quality  
8 Exhibit 4.0?

9 A Yes, I did.

10 Q And is that, the testimony that's  
11 contained, true and correct?

12 A Yes, it is.

13 Q Is there any corrections that have to be  
14 made to that testimony?

15 A No, there is not.

16 Q Did you also have occasion to review with  
17 the testimony identified as Quality Exhibit 4.0,  
18 Quality Exhibits 4.1 through 4.13?

19 A Yes, I did.

20 MR. BUELL: Your Honor, the Direct Testimony of  
21 James Prola identified as Quality Exhibit 4.0,  
22 including attached exhibits 4.1 through 4.13 was

1 filed with the Chief Clerk of the Illinois Commerce  
2 Commission on August 10, 2005.

3 And at this time I'd like to offer  
4 into evidence the direct testimony of James Prola  
5 with attached Exhibits 4.1 through 4.13 into  
6 evidence.

7 JUDGE YODER: Any objection, Ms. Buell?

8 MS. BUELL: No objection from Staff, your  
9 Honor.

10 JUDGE YODER: All right. Then those exhibits  
11 4.0 and Attachments 4.1 through 4.13 will be admitted  
12 into evidence in this docket.

13 MR. BUELL: I tender Mr. Prola.

14 JUDGE YODER: Do you have any questions?

15 MS. BUELL: No, your Honor.

16 JUDGE YODER: I have two questions: One might  
17 be a correction. Do you have your testimony in front  
18 of you Mr. Prola?

19 THE WITNESS: Yes.

20 EXAMINATION

21 BY JUDGE YODER:

22 JUDGE YODER: If you could reference page 11,

1 line 423, the third word is payment. I think that  
2 maybe should be corrected to pavement; is that right?

3 THE WITNESS: Yes, you're right.

4 JUDGE YODER: And it's your testimony there on  
5 line 418 that your opinion is the saw cutting does  
6 not move or remove concrete pavement.

7 THE WITNESS: Yes.

8 JUDGE YODER: I don't have any other questions.

9 MR. BUELL: Okay, can Mr. Prola be excused?

10 JUDGE YODER: I don't have anything further for  
11 him.

12 MS. BUELL: Staff has nothing, your Honor.

13 JUDGE YODER: He can be excused.

14 MR. BUELL: Mr. Prola, you can be excused.  
15 Thank you.

16 Your Honor, at this time our next  
17 witness is Mr. Scott Eilken.

18 JUDGE YODER: All right, Mr. Eilken, would you  
19 stand and raise your right hand, please.

20 (Whereupon the Witness was sworn  
21 by the Administrative Law  
22 Judge.)

1 JUDGE YODER: All right, please proceed.

2 S C O T T E I L K E N

3 having been first duly sworn by the Administrative  
4 Law Judge, witnesseth and saith as follows:

5 DIRECT EXAMINATION

6 BY MR. BUELL:

7 Q Mr. Eilken, have you reviewed your  
8 testimony identified as Quality Exhibit 1.0?

9 A Yes.

10 Q Have you also reviewed the attached  
11 Exhibits that are identified as Quality Exhibits 1.1  
12 through 1.6?

13 A Yes.

14 Q Are there any changes or corrections to  
15 your testimony that's been identified as Quality  
16 Exhibit 1.0?

17 A No.

18 Q And does that testimony truly and  
19 accurately reflect what the testimony is?

20 A Yes.

21 MR. BUELL: Your Honor, let the record note  
22 that the testimony of Scott Eilken identified as



1     Quality Exhibit 1.0, including Attachments 1.1  
2     through 1.6 was filed with the Chief Clerk's Office  
3     on August 10, 2005.

4             JUDGE YODER:   Do you tender?

5             MR. BUELL:   I offer into evidence the Direct  
6     Testimony of Scott Eilken identified as Quality  
7     Exhibit Number 1.0 including Attachments 1.1 through  
8     1.6 into evidence.

9             JUDGE YODER:   Any objection to the admission of  
10    those exhibits?

11            MS. BUELL:   No objection, your Honor.

12            JUDGE YODER:   All right.   Exhibit 1.0 and  
13    Attachments 1.1 through 1.6 a couple of which appear  
14    to be what I call group exhibits will be admitted  
15    into evidence in this Docket.

16                               (Whereupon Quality Exhibit  
17                               Number 1.0 with Attachments 1.1  
18                               through 1.6 was admitted into  
19                               the record.)

20            JUDGE YODER:   Do you tender Mr. Eilken?

21            MR. BUELL:   I tender Mr. Eilken.

22            JUDGE YODER:   Do you have any cross, Ms. Buell?

1 MS. BUELL: Staff has no cross, your Honor.

2 JUDGE YODER: I think I have two questions.

3 EXAMINATION

4 BY JUDGE YODER:

5 JUDGE YODER: You're the owner and partner of  
6 Quality Saw & Seal?

7 THE WITNESS: An owner and a partner.

8 JUDGE YODER: Okay, you were not running the  
9 cutting machine on this day?

10 THE WITNESS: No.

11 JUDGE YODER: And have you run them in the  
12 past?

13 THE WITNESS: Yes.

14 JUDGE YODER: Are you aware of what thickness  
15 blade was being used on this day?

16 THE WITNESS: My employees stated to me the  
17 size blade that they would use at this time.

18 JUDGE YODER: And they vary -- in your  
19 testimony you indicate they can be from 12 inch - now  
20 I've got to think - diameter to 88 inch diameter.

21 THE WITNESS: Yes.

22 JUDGE YODER: Okay, and that would be all the

1 way across.

2 What is -- does the thickness of each  
3 blade or the curve of each blade vary depending on  
4 the diameter of the blade?

5 THE WITNESS: Yes.

6 JUDGE YODER: Okay. I assume they get larger  
7 as the blades get larger in diameter?

8 THE WITNESS: Yes.

9 JUDGE YODER: Okay. What is the curve or the  
10 thickness of, as far as you're aware, the blade that  
11 your employee testified was being used today, if  
12 you're aware?

13 THE WITNESS: I'm sorry.

14 JUDGE YODER: I believe you testified that it  
15 was a nine-inch blade being used?

16 THE WITNESS: A 26 inch blade to cut a maximum  
17 depth of 10 inches.

18 JUDGE YODER: All right. What would be the  
19 thickness or width of that blade be?

20 THE WITNESS: If I'm not mistaken, it was a 187  
21 width of the core blade.

22 JUDGE YODER: I might need that in English.

1     What does that mean?

2             THE WITNESS:   They do it in a decibel.

3             JUDGE YODER:   Okay.

4             THE WITNESS:   So a 187 width is basically --

5     125 would be a quarter inch, so it's a little wider

6     than a quater inch.

7             JUDGE YODER:   Okay, so your estimate would be

8     between a quarter and a third of an inch,

9     approximately?

10            THE WITNESS:   Yes.

11            JUDGE YODER:   Okay.   Were you an owner or

12     partner of Quality Saw & Seal back in 2003?

13            THE WITNESS:   Yes.

14            JUDGE YODER:   Okay.   And you're aware of the

15     previous - and I don't have the number in front of me

16     - the previous investigation regarding saw cutting

17     which no penalty or proceeding was involved in in

18     that case.

19            THE WITNESS:   Yes.

20            JUDGE YODER:   But it's Quality Saw & Seal's

21     position that saw cutting should not be included in

22     the definition of either excavation or demolition?

1 THE WITNESS: Yes.

2 JUDGE YODER: I don't have any other questions.

3 MR. BUELL: I just have a couple.

4 REDIRECT EXAMINATION

5 BY MR. BUELL:

6 Q With respect to saw cutting, Standard  
7 Specifications for Road and Bridge Construction  
8 adopted January 1, 2002 by the Illinois Department of  
9 Transportation do reference saw cutting; is that  
10 correct?

11 A Yes.

12 Q And the Standard Specifications for Road  
13 and Bridge Construction adopted January 1, 2002 by  
14 the Illinois Department of Transportation provide  
15 that that activity is not an excavation; is that  
16 correct?

17 A Yes.

18 Q And that same Standard Specifications for  
19 Road and Bridge Construction adopted January 1, 2002,  
20 by the Illinois Department of Transportation was  
21 applicable in 2003 at the time that this other  
22 incident occurred?

1           A     Yes.

2           Q     And again, the policy of the Illinois  
3     Department of Transportation again in 2003 was that  
4     saw cutting is not excavation?

5           A     Yes.

6           MR. BUELL: That's all the questions I have.

7           JUDGE YODER: Do you have anything based on  
8     anything?

9           MS. BUELL: Nothing.

10          JUDGE YODER: Do you have any other evidence to  
11     present, Mr. Buell?

12          MR. BUELL: I have no other evidence to  
13     present.

14          JUDGE YODER: Any rebuttal.

15          MS. BUELL: No, your Honor.

16          JUDGE YODER: All right. Then I think we're  
17     done today.

18                     We, as far as testimony, prior to  
19     going on the record we had a discussion as to a  
20     briefing schedule in this docket and I will read that  
21     into the record and anybody can correct me if I  
22     misspeak.

1                   It's my understanding that the parties  
2     will each file briefs in this Docket by the close of  
3     business, September 21, 2005.

4                   Any reply briefs that the parties  
5     decide to file will be filed on or before October 3,  
6     2005.

7                   I will endeavor to have a Proposed  
8     Order out to the parties by October 14, 2005.

9                   And these next dates -- if I get it on  
10    the 15th -- but any briefs on exception will be due  
11    from the parties two weeks after that which if I get  
12    my job done on time would be October 28.

13                  And any reply to exceptions of the  
14    Proposed Order would be due then one week after that,  
15    so at this point, a tentative November 4th.

16                  And the parties understand that there  
17    is a deadline in this case of December 26 and the  
18    last Commission Session before that will be December  
19    21.

20                  Anything else we need to handle today?

21                  MS. BUELL:   Nothing further from Staff, your  
22    Honor.

1           MR. BUELL:  Nothing further.

2           JUDGE YODER:  All right.  I will mark the  
3   record heard and taken.

4                               (Which was all the proceedings  
5                               had in this cause.)

6                               HEARD AND TAKEN

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